

BOARD OF APPEALS CASE NO. 5007

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BEFORE THE

APPLICANT: Michael K. Lyall

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ZONING HEARING EXAMINER

**REQUEST: Special Exception to permit
construction services in the Agricultural
District; 901 West Ring Factory Road,
Joppa**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 12/29/99 & 1/5/00

HEARING DATE: March 1, 2000

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Record: 12/31/99 & 1/7/00

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Michael K. Lyall, is requesting a Special Exception pursuant to Section 267-53(H)(1) of the Harford County Code to allow construction services in an Agricultural District.

The subject property is located at 901 West Ring Factory Road, Joppa, in the Third Election District. The parcel is more specifically identified as Parcel 245, in Grid 3F, on Tax Map 55. The property contains approximately 1.27 acres, all of which is zoned AG Agricultural. The owners of the property are Michael and Laurie Lyall.

The Applicant, Michael Lyall, appeared and testified that he and his wife own the subject property where they have lived for the past two years. For the ten years prior to their move to Harford County, and continuing to the present, Mr. Lyall testified that he has operated a concrete construction business out of his home. He is the sole owner-operator, with no employees other than himself and no actual construction work performed on the premises. His business typically involves relatively small jobs, including residential sidewalks and patios. Mr. Lyall indicated that he has erected a 24 foot by 24 foot forest green tent on his property in which he stores tools and equipment needed for the business. These materials include primarily small hand tools, such as picks and shovels, wheelbarrows and some lumber. The only other "construction" equipment which is stored on the property is Mr. Lyall's F450 pick up/dump truck which he parks on the gravel driveway, next to the tent. During the winter months when Mr. Lyall has little work, the truck remains parked on the driveway most of the time.

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During the good weather months, when there is concrete work available, the truck driven by Mr. Lyall would normally be gone from the property during most of the day. Mr. Lyall noted that the tent is located approximately 55 feet from the property line, in a wooded area, and the truck is parked next to it. He indicated that when he erected the tent, he made every effort to have the tent blend in with the environment, including choosing a forest green color that would blend in with the trees.

Upon cross-examination by the People's Counsel, Mr. Kahoe, Mr. Lyall testified that there would be no workers other than himself coming onto the property for business purposes. There are no employees to park personal vehicles on the property and there is no other commercial equipment parked on the property with the exception of the single axle dump truck owned by Mr. Lyall. If that truck were to break down, Mr. Lyall indicated that he would replace it with a similarly-sized truck. In addition, Mr. Lyall testified that he does not store any other equipment or materials outside of the tent. There are no piles of sand, concrete or gravel stored on the site. Mr. Lyall noted that he changes his own oil, and takes the oil to the service station for disposal. The only oil he keeps on the property would be a case or so for the truck, and the oil is stored in a separate shed located on the property. He also stores a small amount of gasoline for his lawn mower in the shed, and keeps a small jar of brake fluid and a gallon of hydraulic fluid in the tent for use in the truck. Mr. Lyall testified that he does not work on Sundays or holidays. He usually leaves for work during the weekday by 6:00 a.m. and returns by the time it gets dark. He occasionally works on a Saturday. Mr. Lyall indicated that he is willing to abide by any conditions placed upon the operation of the construction service if the special exception is granted.

Several neighbors of the Applicant appeared and testified in favor of granting the special exception. Mr. Mitchell Oaster, 918 West Ring Factory Road, Joppa, lives approximately 4 houses down from the subject property. Mr. Oaster testified that he owns a truck similar to Mr. Lyall and parks his truck on his own property with no problems or complaints. He indicated that he believes that there would be no negative impact or detrimental effect on the neighborhood or adjoining properties as a result of the construction services business, in part because there is already a nursery business located across the street which produces more traffic, has significant storage of nursery materials and stock and even has tractor-trailers

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which come on the site. He has no objection to the approval of the special exception and believes that the Lyall's have improved the property with landscaping and fencing.

Mr. John Griffiths, 900 West Ring Factory Road, Joppa, appeared and testified that he lives approximately 1000 feet from the subject property and supports the request for the special exception. Mr. Griffiths noted that a lawn mower business was located on the subject property prior to the Lyall's moving in. He has lived in the neighborhood for 32 years and does not believe that the construction services business causes any problems or negative impact to the neighborhood. According to Mr. Griffiths, if Lyall's truck did not have business lettering on the side, one wouldn't even know there was a business there. Seven other neighbors testified in favor of granting the special exception for similar reasons to those expressed by Mr. Griffiths and Mr. Oaster, with several witnesses adding that the tent is visible from the road but not intrusive and causing no detrimental effect to the neighborhood.

Ms. Laurie Lyall, co-owner of the subject property and the wife of the Applicant, appeared and testified that she would also agree to abide by any conditions placed upon the subject property and the construction service business if the special exception were granted.

Mr. Anthony McClune, Manager, Division of Land Use Management for the Department of Planning and Zoning, appeared and testified that the Department recommended approval of the special exception, subject to certain conditions, including but not limited to, the installation of additional landscaping and buffers around the tent and parking area, limitation of parking to one commercial vehicle, and prohibition of storage of materials outside of the tent. Mr. McClune noted that the Applicant had obtained a permit for the construction of the storage tent. According to Mr. McClune, the tent is in character with other accessory structures in the area and would be permissible without a special exception if it were used solely for storage of residential items. Mr. McClune noted that trucks, farm machinery and other farm-type equipment is normal in an agricultural district and in the subject neighborhood. Accordingly, Mr. McClune indicated that there should be no adverse impact on adjoining properties or the surrounding neighborhood if the request is approved.

Four witnesses appeared in opposition to the request. Mr. Carl Lafone, 1301 Hollingsworth Road, Joppa, testified that he is the neighbor who lives closest to the

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aforementioned tent. He has lived next door to the subject property for 20 years and the tent is visible from his home. Although he had originally told the Applicant that he had no problem with the construction of a tent, he didn't realize that the size of the tent was going to be 24 by 24 by 10 feet high. It was Mr. Lafone's testimony that the tent is too large for the subject property. Mr. Lafone also testified that he believes that the access to the Applicant's property is unsafe for vehicles entering and exiting the Applicant's driveway in that there is inadequate visibility at that location. Mr. Lafone also has concerns that materials stored on the Lyall property will pollute his well.

Ms. Cozette Lafone, 1301 Hollingsworth Road, Joppa, also testified in opposition to the request. Ms. Lafone's is primarily concerned with possible pollution of the water, not only in the wells in the neighborhood, but into the Winter's Run tributary as well. Ms. Lafone echoed Mr. Lafone's concern that the access to the Applicant's driveway is unsafe due to poor visibility.

Two other witnesses testified in opposition. Mr. Lester Daasch, 1000 Hollingsworth Road, Joppa and Mr. Larry Satterfield, 1305 Hollingsworth Road, Joppa, both testified regarding their concerns that the area was getting too commercialized and that the Applicant's business might grow beyond it's current operation. Mr. Daasch was also concerned about enforcement of any conditions which might be placed upon the business and whether they would be binding.

The hearing was continued for several weeks at the request of People's Counsel and the Applicant to give the parties time to meet at the property to see if any agreement could be reached regarding additional conditions or compromises. No additional evidence or information was received from the parties. The Department of Planning and Zoning has submitted an addendum recommending some additional conditions if the request is granted.

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CONCLUSION:

The Applicant is requesting a Special Exception pursuant to Section 267-53(H)(1) of the Harford County Code which provides:

“Construction services and suppliers. These uses may be granted in the AG and VB Districts, provided that a buffer yard ten feet wide shall be provided around all outside storage and parking areas when adjacent to a residential lot or visible from a public road.”

In addition to the specific requirements of the Code, a Special Exception may not be granted unless consideration is given to the “Limitations, Guides and Standards” set forth in Section 267-9(I) of the Code as follows:

“Limitations, guides and standards. In addition to the specific standards, guidelines and criteria described in this Part 1 and other relevant considerations, the Board shall be guided by the following general considerations. Notwithstanding any of the provisions of this Part 1, the Board shall not approve an application if it finds that the proposed building, addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. The Board may impose conditions or limitations on any approval, including the posting of performance guaranties, with regard to any of the following:

- (1) The number of persons living or working in the immediate area.**
- (2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.**
- (3) The orderly growth of the neighborhood and community and the fiscal impact on the county.**
- (4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.**
- (5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.**

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- (6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.
- (7) The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.
- (8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.
- (9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.
- (10) The preservation of cultural and historic landmarks.”

The overwhelming evidence presented in this matter demonstrates that the subject property is located in a AG zoned district which has maintained a degree of rural character despite the fact that several of the residential lots are under 2 acres in size. The construction services in question are in the nature of a one-man operation, with little or no business being conducted on site and with storage and a vehicle that appears to be consistent with other uses in the neighborhood. The operation of the business would not appear to interfere with the quality of life in the neighborhood, and any minor annoyances should be able to be addressed by the addition of some landscaping and other conditions which will be outlined below.

The Hearing Examiner is satisfied that the Applicant has met or exceeded all of the requirements of the Code in the instant case.

The Maryland Court of Appeals, in addition to the specific requirements for a special exception use has set forth the basic test in such cases. As stated in the case of Schultz v Pritts, 291 Md. 1, 432 A.2d 1319 (1981):

“...The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible *absent any facts or circumstances negating the presumption*. The duties given the Board are to judge *whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan.*” (Emphasis added)

The Hearing Examiner can find no persuasive evidence that this particular use at this

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particular location would have any adverse impacts above and beyond those normally associated with such a use, regardless of its location within the zone. Consequently, the Hearing Examiner recommends approval of the requested Special Exception, subject to the following conditions:

1. The storage tent and parking area shall be located a minimum of 70 feet from the center line of the road;
2. The Applicant shall submit a landscaping/buffer plan to the Department of Planning and Zoning for review and approval;
3. The approval of the Special Exception is limited to Mr. Lyall only and shall terminate upon sale or transfer of the property;
4. All materials used in the business shall be stored within the tent structure, which shall not exceed its current size;
5. Only one (1) single axle dump truck shall be stored on the property. No other commercial vehicles shall be stored on this site; and,
6. The Applicant shall obtain all necessary permits, inspections and approvals for the proposed use. This will include an access permit from the Department of Public Works.

Date JUNE 5, 2000

**Valerie H. Twanmoh
Zoning Hearing Examiner**